

THE NARRATIVE OF A CRIME.

The Murder of Old Farmer Umberger, in Somerset County, and Conviction of the Nicely Boys.

LOOKING TO PATISON FOR A REPRIEVE.

The Evidence Produced Against the Men Condemned to Be Hanged Next Week.

STRANGE STORY OF A DARKLY-MYSTERIOUS TRAGEDY.

Visit of the Assassins to the Old Homestead—Searching for Stolen Jewelry—The Fatal Shots—Death of Umberger—Alarming the Country—Rewards for the Murderers—Tracks in the Snow—Arrest of the Nicelys—Popular Feeling Against the Prisoners—Veracity of Witnesses—Proving an Alibi—A Verdict of Death—Charges That the Jury Was Influenced by the Mob—One Juror Recants—The Confession of John Beach—The Phenologist's Mysterious Visitor—A Stranger Who Knew All About the Murder—Prisoners Break for Freedom—Crippled and Recaptured—The Nicelys Declare Their Innocence—Preparations for the Execution—Parents' Testimony for Their Boys—The Haunted Farm—Drift of Public Opinion—The Lawyers' Test.

In eight days from to-day Joseph and David Nicely are to be hanged in Somerset jail for the murder of Herman Umberger on the evening of February 27, 1889. The devices of the law have been exhausted in behalf of the prisoners, and their only hope now lies in the intercession of Governor Pattison.

THE STORY OF THE CRIME.

HOW FARMER UMBERGER WAS KILLED BY MASKED MEN.

He Was His Own Banker—A Quiet Home Disturbed by Robbers—The Murder—The Search for Concealed Wealth—Died at His Wife's Feet—The Alarm Bell.

Herman Umberger owned a farm of 135 acres in Somerset county, on the Johnstown pike, about two miles from Jenertown, a village of less than a dozen houses. Umberger was about 71 years old, and bore a reputation for thrift and wealth. His farm was fertile and well tilled, and the old gentleman had added to his store by lending money on well-secured notes.

Umberger Banked With Himself.

Shortly before the murder was committed Umberger began collecting on such notes as he held which were maturing, and notified his debtors to come to the front with promptness. Everyone in the neighborhood knew of this, and also knew that the old man kept large sums of money in his house. There was another reason for this besides a distrust of the wayward cashier who leaves an empty vault and a bad reputation. The nearest bank was at Somerset, which could only be reached by driving 15 miles over very rough roads, a very heavy undertaking for a man who had passed his three-score years and ten.

As a result, the old gentleman often had large sums of money in his house. This he would keep in a couple of capacious, well-worn pocketbooks, which he concealed in the back of a bureau drawer in his bedroom. Evening in the Farmer's Household.

When dusk fell on the Umberger homestead on Wednesday evening, February 27, 1889, the family, with the exception of George Horner, who had gone to a store three miles away, were seated around the stove in the low-ceilinged living room. It was a dreary evening. Sleet was falling fast, giving to the snow-clad landscape a gray tinge, in sad harmony with the dark sky, hung low with clouds, while the rest less pines around the old house shivered and rattled their naked branches.

grandma, grandpa is shot," and fled to a neighbor's house. The ringing of the alarm bell and the screams of the two girls as they fled along the dark country roads soon aroused the neighborhood, and ten minutes after Farmer Umberger fell dead the house was filled with farmers and their families, who found Mrs. Umberger still ringing the bell, while her husband's dead body lay at her feet. The men who had committed the murder and robbery had escaped in the darkness, leaving no clew behind.

TRACKS IN THE SNOW.

LEAD UP TO THE ARREST OF THE TWO NICELY BOYS.

Somerset Farmers Incensed by the Umberger Tragedy—Rewards Offered for the Conviction of the Murderers—Searching the Houses of Suspects.

When the news of the Umberger tragedy spread a perfect tempest of wrath was awakened in the bosoms of the farmers of Somerset county. This feeling was first aroused by the peculiarly flagrant character of the crime, and this feeling was intensified by the operations of what is now known as the McClelland gang, who shortly after hanged and roasted a Somerset county farmer to make him reveal his hidden wealth. Somerset county is devoted almost exclusively to agriculture, and the farmers felt that there should be no safety for them in their isolated homes unless justice made an example of the criminals as a warning to others predisposed towards deeds of robbery and murder.

As a result of this sentiment the County Commissioners offered a reward of \$500 for the apprehension of the criminals, the Umberger family offered \$1,000 and others came to the sum until the aggregate reward was over \$2,000.

The Home of the Nicelys. Four miles back of Ligonier, in Westmoreland county, and 15 miles from the Umberger farm, lived the Nicely family. The head of the family was A. A. Nicely, a man much respected throughout that section of the country. He owned a large and valuable farm, free of encumbrance, and had a neat little bank account in addition. The old gentleman and his wife belonged to the Reformed Brethren of Dunkard, faith, and worshipped in a little frame church built by Nicely on his farm.

The Nicely family consisted of four sons and four daughters, the latter married and living away from home. Joseph Nicely, the eldest son, who was then 37 years old, lived on a small farm which his father had cut off from his main acre. Joseph was married and had seven children, his wife being a woman of exemplary character and strong religious principles.

Thriving by His Industry. Joseph was industrious and bright. He had traveled through the West in his youth, and had become infected with the American spirit of hustling. He worked his own farm, helped his father, did the butchering for the neighborhood, and when there was nothing else to do went into the virgin forests and helped to get lumber. Occasionally he would do a little trading, and he carried on a small business in articles not quite so pretty, but more substantial. As a result of his thrift and industry he always had a roll of bills in his pocket, was pleased with himself and content with his lot.

David Was Delicate but Industrious.

David, the youngest of the Nicely boys, was 25 years of age at the time of the Umberger murder. He also was married, had three children and lived on his father's farm about a quarter of a mile from the homestead. David was a delicate man. He suffered from enlargement of the heart, which affected his whole system, and prevented him from performing heavy labor or taking exercise of a severe character. Nevertheless David was just as industrious as the other members of his family. He helped his father farm, tilled the acres he occupied himself, which his father had promised to do for him in the spring of 1889, and made shoes for the neighbors.

On the Track of the Nicelys. Suspicion first fell upon Joseph and David Nicely when Lewis and Charles Varner, father and son, said they had seen the Nicelys on Wednesday noon, and that the latter was starting along the pike over Laurel hill. Smith said that Seal Burnett was with him at the time, but Burnett declared that it was not on Wednesday, but on the Saturday after the murder.

Contradictory Evidence of Identification. Lewis Bener and Edward McCracken met two men ascending the mountain on the afternoon of the murder. Bener believed it was David Nicely, as did McCracken, but the latter was not positive. To offset this William Mallivan said he met Bener and McCracken a little later, and that McCracken said Bener had asked him who the man was, but he did not know, and on the day of the hearing of the habeas corpus proceedings McCracken said he did not know the man.

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Mrs. Mary Walter, who lived on the pike, two and one-half miles west of Jenertown, had seen two men coming along the road between 5 and 6 o'clock on the evening of the murder. She identified Joseph and David Nicely as the men, although she had not recognized them at the preliminary hearing several weeks before.

In addition to the tracks were found in the snow leading from the Umberger house over the mountains in the direction of Ligonier. On the Monday after the murder Joseph and David Nicely were arrested at their homes. In Joseph's house was found a brown derby hat, a pair of gum boots with leather soles, an old rim-fire pistol which would not fire a cartridge, and a box containing center-fire and rim-fire cartridges. In David's house was found a gray cap, a pair of common yellow-striped overalls, a pair of gum boots and a pair of gum boots, a rim-fire revolver with the hammer cocked. David was wearing, when arrested, a gray overcoat, with several patches of a darker color.

The prisoners were taken to the National Hotel at Ligonier, then kept by Watson Menober, who was married to a sister of the Nicely boys. They were kept there all night, but were given considerable liberty, and had several opportunities to get rid of any articles in their possession which might be used as evidence against them.



David Nicely.



Joseph G. Nicely.

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town, where the Johnstown pike, on which Umberger lived, crosses the Philadelphia pike, they, according to the theory of the Commonwealth, struck off from the high road, and pushing on through a thickly-wooded hollow, emerged in the rear of the Umberger home.

Links in the Chain of Evidence. At the trial the Commonwealth produced a pocketbook, said to be the one sent by David to his wife after his arrest, and identified it by the handwriting of Joseph and Farmer Umberger. A common red and white spotted handkerchief found in David Nicely's pocket was identified by Ella Menober, who testified that she had seen it worn around the face of the larger of the two men, and his overcoat was identified by the little granddaughter by reason of a patch on the collar. The handkerchief and overcoat were a brown derby hat with a hole in the brim. Such a hat was produced as having been found in Joseph Nicely's house.

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his victim, and thus furnish evidence against himself, without any possibility of recompense to pay for the risk. Again, they argued and proved, he had ample time and opportunity to get rid of the pocketbook, while he was kept under arrest all night at the National Hotel in Ligonier.

Right in the same line was the evidence produced to offset the production of the derby hat, which Mrs. Umberger identified by a hole in the brim, as having been worn by the smaller of her husband's two assailants. The defense did not deny that the hat in court belonged to Joseph, but produced witnesses who swore most positively that there was no hole in the brim when the hat was taken from Joseph's house a week or more after the murder. Evidence was given to show that the patch on David's coat, which led to its identification by little Nannie Umberger, was not sewn on until after the murder. The handkerchief and overcoat were of such a common pattern, that the defense held that it would be impossible to identify them.

SENTENCED TO DEATH.

BOY MEN CONVICTED OF MURDER IN THE FIRST DEGREE.

Clamor in Court Causes an Appeal for a New Trial—The Indictment—Popular Sentiment—Every Avenue of Escape Closed and the Execution Fixed—A Repentant Juror.

The jury in the case retired on June 7 to find a verdict. Judge Baer, in his charge to the jurors, impressed upon them the enormity of the offense with which the prisoners were charged, rapidly reviewed the testimony, leaving to the jury the task of reconciling it, or of selecting that side which seemed to them the most reasonable. He further instructed them that if they found the prisoners guilty, it must be murder in the first or second degree.

The jury was out all night and returned a verdict of guilty. The verdict did not specify what the prisoners had been found guilty of, and they were ordered to remedy the defect, which they did in a few moments by returning a verdict of murder in the first degree against both prisoners. The verdict was a popular one, and was enthusiastically endorsed by large crowds which had gathered from all parts of the county to hear the result of the trial.

The prisoners' counsel at once made a motion for a new trial, alleging that the jury had been influenced, if not overawed, by the turbulence of the audience during the trial, and proving that remarks calculated to intimidate or unfavorably influence the jurors were let fall in their hearing while going to and from for a tipstall. The motion was refused, and the jury, satisfied by these facts and to overbearing of the jurors as well while considering their verdict: "If we don't convict these men of murder in the first degree the citizens will mob us."

New evidence had also been discovered which would strengthen the alibi, and an affidavit was produced from Dr. G. B. Anderson, who had treated David Nicely, to the effect that he had heart disease, in which he stated that he had been physically impossible for David to have made the long tramp of 28 or 30 miles over the mountain and back again on the day of the murder.

To Be Hanged by the Neck. The counsel for the defense raised some other points in their motion, but on August 19 a new trial was refused and the prisoners called up for sentence. The judge, before sentence was passed upon them, the brothers arose in turn and simply said: "I have only to say that I am not guilty. The prisoners were sentenced to be hanged by the neck until dead that they might expiate the murder of Farmer Umberger, of which they were convicted, and were returned to jail."

The good people of Somerset county were satisfied. Rampant crime had been seriously discouraged at that time of fear, for four of the McClelland gang had also been sentenced to the penitentiary to serve long terms. The Somerset county farmer felt that now he could retire at night in perfect safety, and in another where agriculture is not practiced.

A Repentant Juror's Letter.

The defense did not give up, but prepared to appeal to the Supreme Court. The counsel felt discouraged by the following letter from one of the jurors, which was received on the day of sentence:

General W. H. KAUFMAN, August 17, 1889. DEAR SIR:—I draw a few lines as regards the Nicely case. I have been thinking a great deal about it and am not satisfied. It has been bearing on my mind ever since it was not a will that it was decided that way. I was sick and hurt; the evidence was not sufficient to convince me of their guilt, and I would have stayed in that jury room until now if I had not been overpowered by men who were not my friends. Will you kindly give to the Nicelys and telling them that I do not want them to have any hard feelings against me, and that I do to my duty and could not. Now, Mr. Koontz, let me know what they say.

Physically Incapable of the Crime.

The defense after proving, from its standpoint, an alibi for both the defendants, proceeded to strengthen their case by evidence showing that David Nicely was physically incapable of walking 30 miles' the greater part of the way over a mountain, and all the way over had roads made worse by snow and slush. The Nicelys' family physician had died shortly after the arrest of the boys, so the defense called Dr. Brubaker, who had been treated by the Nicelys, and testified that David was suffering from petriophry or overgrowth of the heart an organic disease of some standing. In respect the prisoner's heartbeats were in 12 a minute above the normal, and that he was unable to do any physical exercise. In answer to a question as to the effect of walking upon the prisoner, Dr. Brubaker replied: "He would be liable to sudden death under long-continued exercise. The natural beat of his heart now is 84 to the minute. When a man walks rapidly every second the pulse of the heart is increased and has become irregular by the outgoing of the blood and may choke, or it may lose the power of contracting, and so cause death."

A Fast Walk Would Be Fatal.

"David Nicely may have a pulse, say of 180 under rapid walking, and suddenly the pulse may fall to 80 a minute, and then he would rapidly die from loss of power in the heart. It would be possible for him in his condition to walk 14 or 15 miles, but he would have to walk very slowly and deliberately."

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The phenologist has not been seen in that neighborhood since. About 8 o'clock on the second morning after the murder a man descended the mountain at New Florence, apparently from the direction of Jenertown. His clothing and appearance tallied generally with that of the smaller man concerned in the Umberger murder, but the people he met paid no attention to him, and he was too busy to be interested in the news he brought. He stopped to listen to James L. Hare and his companions, who were piling ties and talking about a young man who was killed on the railroad the day before.

Know All About the Murder. "Are you talking about the Umberger murder?" asked the stranger. "No," was the reply. "What do you mean?" "Didn't you hear of the Umberger murder yet?" was the interrogative reply.

Here knew the Umberger, and was interested, so the stranger told him all about it, and then went on to say that the people of Jenertown didn't know how to conduct an inquest, and he had to take charge of affairs and show them how to do it properly. He further told Hare that he was going to Jenertown, where he had a number of stonemasons at work. When he went down to the railroad, and instead of waiting for a passenger train which he was going to take a few minutes, jumped on a freight and rode out of sight.

Inquiry was then made among those persons who attended the inquest, but no one remembered seeing such a man, and all were confident that they would not have forgotten him if he had acted as master of ceremonies. The stranger then gave his information elsewhere, and had been first with the news at New Florence.

John Beach's Remarkable Confession.

No clew could be found to the phenologist, and the attorney General, in this trial in despair, when, in June last, General Coffroth, one of the Nicelys' counsel, was staggered to find in his mail a confession of the murder which was badly written and poorly spelled, and read like this: "I am John Beach and I am a citizen of Somerset county, Pa., and started after to beat the train which was going to New Florence, Kan. There two of them left the crowd and the other two I went together to Kansas City. One of their names was William Burkholder, and the other Sipe. I forgot their names, but I remember that they were from Westmoreland county, and well acquainted with each other. When we got to Kansas City we were in company with four other men. We expressed our wishes to four other men, morland county, Pa., and started after to beat the train which was going to New Florence, Kan. There two of them left the crowd and the other two I went together to Kansas City. 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